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SENATE

REPORT
102-230

LAMPREY RIVER STUDY ACT OF 1991

NOVEMBER 23 (legislative day, NOVEMBER 20), 1991.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 461]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 461) to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

On page 2 line 25, strike "(10); and" and insert in lieu thereof, "(10) and correcting the reference in such paragraph from paragraph (106) to (108); and".

PURPOSE OF THE MEASURE

The purpose of S. 461, as ordered reported, is to designate a 10-mile segment of the Lamprey River in New Hampshire for study for potential addition to the Wild and Scenic Study Rivers System.

BACKGROUND AND NEED

The Lamprey River flows over 60 miles through southeastern New Hampshire before entering the Great Bay, a National Estuarine Research Reserve that empties into the Atlantic.

The section of the Lamprey proposed to be studied for possible Wild and Scenic River designation by S. 461 flows through mostly rural areas, bordered by farms or undeveloped property. There are no roads paralleling the river, although four bridges cross the study segment.

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The river is a popular recreational area with fishermen, canoeists, swimmers, and—in the winter—skaters. The Lamprey is also important for fish and wildlife habitat. The river is recognized as New Hampshire's most significant river for anadromous fish, including the Atlantic Salmon and shad. The river corridor provides food and shelter for a wide variety of wildlife, including such rare or threatened species as the Baltimore Butterfly and the Yellow Rail. This segment of the Lamprey was included in the 1982 Nationwide Rivers Inventory, a study of potential Wild and Scenic Rivers conducted by the National Park Service.

Legislative History

S. 461 was introduced by Senators Smith and Rudman on February 21, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on this measure on November 7, 1991.

At the business meeting on November 20, 1991, the Committee on Energy and Natural Resources ordered S. 461, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Committee on Energy and Natural Resources, in open business session on November 20, 1991, by a unanimous vote of a quorum present, recommends that the Senate pass S. 461, if amended as described herein.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman [1]	
Mr. Wirth	
Mr. Conrad [1]	
Mr. Akaka [1]	
Mr. Fowler [1]	
Mr. Shelby [1]	
Mr. Wellstone	
Mr. Wallop	
Mr. Hatfield [1]	
Mr. Domenici	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 461, the Committee adopted a technical amendment correcting a paragraph reference in subsection 5(b) of the Wild and Scenic Rivers Act.

SECTION-BY-SECTION ANALYSIS

Section 1 entitles the Act the "Lamprey River Study Act of 1991."

Section 2 amends subsection 5(a) of the Wild and Scenic Rivers Act to make technical corrections in the numbering of previously designated Wild and Scenic Study Rivers and to add a new paragraph (111) to designate a 10-mile segment of the Lamprey River as a Wild and Scenic Study River.

Section 3 amends subsection 5(b) of the Wild and Scenic Rivers Act to make a technical correction in the numbering of a previously designated paragraph and to add a new section 11 providing that the study of the Lamprey River shall be completed and submitted by the Secretary of the Interior not later than 3 years after the date of enactment of this paragraph.

Section 4 authorizes the appropriation of such sums as are necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington DC, November 21, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and National Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 461, the Lamprey River Study Act of 1991, as ordered reported by the Senate Committee on Energy and Natural Resources on November 20, 1991. CBO estimates that the federal government would spend $200,000 over the next three years to implement this bill. About $80,000 of that amount has already been appropriated. Enactment of S. 461 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. No additional costs would be incurred by state or local governments as a result of this bill's enactment.

S. 461 would add a 9.5 mile segment of the Lamprey River in New Hampshire to the list of rivers to be studied for inclusion in the Wild and Scenic Rivers System. The study of the Lamprey River would have to be completed within three years of the bill's enactment. Based on information provided by the National Park Service, we estimate that the study would cost about $200,000 over the 1992–1994 period. The fiscal year 1992 Interior Appropriations bill provided $80,000 to begin the study, leaving $120,000 to be provided in the future.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 461. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 461, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Federal Energy Regulatory Commission setting forth Executive agency recommendations relating to S. 461 is set forth below. On March 1, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 461. These reports had not been received at the time the report on S. 461 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

FEDERAL ENERGY REGULATORY COMMISSION,
Washington, DC, November 19, 1991.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSTON: Thank you for your letter of October 29, 1991, requesting comments on S. 461, a bill to designate a segment of the Lamprey River in the State of New Hampshire as a study area for inclusion in the National Wild and Scenic Rivers System.

In 1989, FERC issued a license to construct Wiswall Dam Project No. 6632 on the Lamprey River. The Commission has extended, until June 15, 1993, the date by which the licensee must commence construction.

Enclosed is a Commission staff report on the bill, which I hope will be useful in your consideration of S. 461. If I can be of further assistance to you in this or any other FERC matter, please let me know.

Yours truly,

MARTIN L. ALLDAY.

Enclosure.

REPORT ON S. 461, 102D CONG., 1ST SESS., A BILL TO AMEND THE WILD AND SCENIC RIVERS ACT OF 1968 BY DESIGNATING SEGMENTS OF THE LAMPREY RIVER IN THE STATE OF NEW HAMPSHIRE FOR STUDY FOR POTENTIAL ADDITION TO THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

SUMMARY OF S. 461

On February 21, 1991, Senator Smith, on behalf of himself and Senator Rudman, introduced S. 461, the "Lamprey River Study Act of 1991."

The bill, in Section 2, amends Section 5(a) of the Wild and Scenic Rivers Act (Rivers Act), 16 U.S.C. § 1276(a), to add to the list of rivers to be studied for potential addition to the National Wild and Scenic Rivers System (System) the segment of the Lamprey River from the southern Lee town line downstream to the confluence with Woodman's Brook at the base of Sullivan Falls in Durham, New Hampshire.

Section 3 of the bill amends Section 5(b) of the Rivers Act, 16 U.S.C. § 1276(b), to provide that the study of the Lamprey River shall be completed by the Secretary of the Interior not later than three years after the date of enactment of S. 461.

Section 4 of the bill authorizes to be appropriated such sums as are necessary to conduct the study.

EFFECT OF S. 461, IF ENACTED, ON APPLICATIONS FILED WITH THE COMMISSION PROPOSING HYDROPOWER DEVELOPMENT AND ON PRELIMINARY PERMITS, LICENSES, AND EXEMPTIONS PREVIOUSLY ISSUED BY THE COMMISSION

Pursuant to Section 7(b) of the Rivers Act, 16 U.S.C. § 1278(b), the Commission is prohibited from licensing the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works that would be on or directly affecting a river designated by Congress for study for potential addition to the System (Study River). Section 7(b), through a limitation on the first prohibition, also prohibits the Commission from licensing project works above or below a Study River or on any stream tributary thereto if the project works would invade or diminish the scenic, recreational, and fish and wildlife values present in the Study River on the date it is designated for study. These prohibitions extend for a period of three complete fiscal years or as otherwise designated by Congress, whichever is later, and for an additional period of time, not to exceed three years following the submittal of the report (prepared by either the Secretary of Agriculture or the Secretary of the Interior, as appropriate) to the President and Congress, for congressional consideration of the report.

The Commission has interpreted the prohibition on licensing of Section 7(b) as applying to the issuance of exemptions. See *Swanson Mining Corp.*, 22 FERC ¶ 61,184

(1983), *aff'd,* 790 F.2d 96 (D.C. Cir. 1986). The Commission has determined that it is the responsibility of the administering Secretary, not the Commission, to make determinations regarding the consistency of a proposed project with the provisions of the Rivers Act. See *China Flat Company,* 27 FERC ¶ 61,224 (1984). However, since Section 7(b) prohibits only the authorization of construction, the Commission has held that it can issue preliminary permits authorizing the study (but not the construction) of projects to be located on Study Rivers. See *City of Delta,* 4 FERC ¶ 61,102 (1978).

A review of the Commission's records indicates that there are no pending applications for license or exemption that would be directly or indirectly affected by S. 461. Commission records show no outstanding exemptions or preliminary permits for projects on the segment of the Lamprey River covered by S. 461. There is one outstanding license for a project on the segment of the Lamprey River covered by S. 461.

The Commission issued a license for the Wiswall Dam Project No. 6632 on June 16, 1989, and denied appeals thereon on June 22, 1990. Requests for rehearing are currently pending before the Commission. Project No. 6632 is located on the Lamprey River approximately one mile above the confluence of Woodman's Brook with the Lamprey River (the downstream terminus of the Study River segment). If S. 461 becomes law before the Project No. 6632 license is final, the license would presumably have to be rescinded. The license will be final if, within 60 days after the Commission issues its order on rehearing, no one has filed a petition for review of the license orders in a United States Court of Appeals. Section 313 of the Federal Power Act, 16 U.S.C. § 825*l.*

The Project No. 6632 license requires the licensee to commence project construction within two years of the issuance date of the license, that is, by June 15, 1991, unless the licensee obtains an extension of the deadline or a stay of the license. Under Section 13 of the Federal Power Act, 16 U.S.C. § 806, the licensee can obtain only one extension, of no more than two additional years. If project construction is not commenced by the deadline, Section 13 of the Act requires the Commission to rescind the license. The licensee, John N. Webster, has not yet requested an extension of the construction deadline.

Statement of Jerry Rogers, Associate Director, National Park Service, Department of the Interior

Mr. Chairman, I appreciate this opportunity to provide your Subcommittee with the views of the Department of the Interior on this legislation.

We recommend the enactment of S. 461 if it is amended to provide for a more comprehensive study of the Lamprey River resources.

S. 461 would amend section 5(a) of the Wild and Scenic Rivers Act to designate a 10-mile segment of the Lamprey River in New Hampshire for study as a potential component of the National Wild and Scenic Rivers System. A report and recommendations to the Congress would be required within three years after the date of enactment.

The Lamprey River is located on the seacoast area of southern New Hampshire. It flows 60 miles to Great Bay, which empties into the Atlantic near Portsmouth. The Lamprey, including four of its tributaries, was reviewed, and the results were included in the National Park Service Nationwide Rivers Inventory, published in 1982. The inventory identified river segments totalling 35 miles as possessing values that warranted further study. The principal river value mentioned in the inventory was its potential as an anadromous fish run. The river is undergoing restoration of its fish run and is noted for historic runs of Atlantic salmon and shad.

We believe the 35-mile stretch of river identified in the 1982 Nationwide Inventory should be studied. A formal 3-year study of just the 10-mile segment proposed in this bill would not be warranted in terms of the time and funds that would be required. A river study under section 5 of the Wild and Scenic Rivers Act is required by law to include: the characteristics that do or do not make the river segment a worthy addition to the National System; the current status of land ownership and use; potential uses that would be enhanced, foreclosed, or curtailed if the area were included in the National System; the extent to which State and local agencies could share in the cost and administration; and cost estimates for land and administration. The report must be submitted to the Governor and the Federal Energy Regulatory Commission (FERC), and then to the President. The President would then submit his recommendation to the Congress as to whether the river should be designated as a component of the National System. An Act of Congress would be required to designate a component of the System.

During the study the National Park Service would seek public comment on alternatives for preservation, acquisition, and management. Under section 7(b) of the Wild and Scenic Rivers Act during the study period FERC would be prohibited from licensing new hydropower projects, and other Federal agencies would be prohibited from assisting any water resources project that would have a direct and adverse effect on river values. The Secretary of the Interior would make any determination of adverse effect. These prohibitions would also extend through the period ending three years from the submission of the report to the Congress.

Except in rare cases involving extraordinary and remarkable river values, we believe a segment of river for consideration as part of the National System should not be less than 25 miles in length. For the Lamprey, we have al-

ready identified 35 miles of river that warrant further study. Accordingly, we recommend that S. 461 be enacted, but only if it is amended as follows:

On page 2, strike lines 16 through 18 and insert the following: "from Newmarket to the town of Epping, and its tributaries, including the Piscassic River, Beech Hill Brook, Fresh River, and the North River to North River Pond."

This amendment would provide for a study of the 35 miles of river identified in the 1982 Nationwide Inventory.

We estimate that the cost of conducting the study would be $200,000. This estimate holds for study of the 10-mile segment referred to in the printed bill or the 35-mile length that we recommend. The principal elements of the cost would be the meetings and development of a river conservation plan with local people that comprise our public involvement process. The extent of this process would be about the same in either study.

If authorized, funding for the study would be subject to the Administration's budgetary priority-setting process.

This legislation has no "Pay-as-you-go" implications under the Budget Enforcement Act.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 461, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * * * *

Sec. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

* * * * * * *

[(106)**]***(108)* **ST. MARYS RIVER, FLORIDA AND GEORGIA.—The segment from its headwaters to its confluence with the Bells River.**

[( )**]***(109)* **MILLS RIVER, NORTH CAROLINA.—The North Fork from the bottom of the spillway of the Hendersonville Reservoir downstream to its confluence with the South Fork; the South Fork from its confluence with the Pigeon Branch downstream to its confluence with the North Fork; and the main stem from the conflu-**

ence of the North and South Forks downstream to a point 750 feet upstream from the centerline of North Carolina Highway 191/280.

[( )]*(110)* SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—The segment of the Sudbury from the Danforth Street Bridge in the town of Framingham, to its confluence with the Assabet, the Assabet from 1,000 feet downstream of the Damon Mill Dam in Concord to its confluence with the Sudbury and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 Bridge in the town of Billerica. The study of such river segments shall be completed and the report submitted thereon not later than at the end of the third fiscal year beginning after the date of enactment of this paragraph.

(111) LAMPREY, NEW HAMPSHIRE.—The segment from the southern Lee town line downstream to the confluence with Woodman's Brook at the Base of Sullivan Falls in Durham.

(b) * * *

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[(8)]*(10)* The study of the river named in paragraph [(106)] *(108)* of subsection (a) shall be completed not later than three years after the date of enactment of this paragraph. In carrying out the study, the Secretary of the Interior shall consult with the Governors of the States of Florida and Georgia or their representatives, representatives of affected local governments, and owners of land adjacent to the river. Such consultation shall include participation in the assessment of resource values and the development of alternatives for the protection of those resource values, and shall be carried out through public meetings and media notification. The study shall also include a recommendation on the part of the Secretary as to the role the States, local governments and landowners should play in the management of the river if it were designated as a component of the National Wild and Scenic Rivers System.

* * * * * * *

(11) The study of the Lamprey River, New Hampshire, shall be completed by the Secretary of the Interior and the report thereon submitted not later than 3 years after the date of enactment of this paragraph.

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